

Senate Daily Reader

Wednesday, February 16, 2005

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State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

391L0372

SENATE COMMERCE COMMITTEE ENGROSSED NO. **HB 1089** - 02/10/2005

Introduced by: Representatives Cutler, McCoy, and Miles and Senators Sutton (Dan),
Duniphan, Gray, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to provide for licensure and regulation of massage
2 therapists and to provide funding from licensure fees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms in this Act mean:

5 (1) "Board," the Board of Massage Therapy;

6 (2) "Massage," the systematic mobilization of the soft tissues of the body through the
7 application of hands or devices for the purposes of therapy, relaxation, or education
8 through means which include:

9 (a) Pressure, friction, stroking, rocking, kneading, percussion, compression, or
10 stretching;

11 (b) External application of water, heat, cold, lubricants, or other topical agents; or

12 (c) The use of devices that mimic or enhance actions done by hands;

13 (3) "Practice of massage therapy," the performance of massage for a fee or other
14 compensation or holding oneself out to the public as performing massage.

15 Section 2. The board consists of five members appointed by the Governor. The terms of the



1 initial members of the board shall be staggered by the drawing of lots with three of the initial
2 members serving a term of three years, two of the initial members serving a term of two years,
3 and one of the initial members serving a term of one year. Any subsequent term on the board
4 shall be three years. One member of the board shall be a person not licensed by the board. Four
5 members of the board shall be persons licensed by the board. The Governor shall fill any
6 vacancy by appointment to complete the unexpired portion of that member's term. No person
7 may serve more than three consecutive full terms on the board. The appointment to an unexpired
8 term is not considered a full term.

9 Section 3. Any member of the board may resign by giving written notice to the board and
10 to the Governor. Resignations are effective when delivered to the Governor and the board.

11 Section 4. The board shall select a president, vice-president, and secretary at its annual
12 meeting. The board may hire an executive secretary to perform any managerial, clerical, or other
13 duties directed by the board.

14 Section 5. The board shall hold an annual meeting at a place and time set by the board. The
15 board may hold special meetings at a time and place set by the president or a majority of the
16 board by giving written notice to the board prior to the meeting.

17 Section 6. Three board members present at any meeting constitute a quorum. No board
18 action may occur unless approved by a majority vote of the entire board.

19 Section 7. Board members shall receive a per diem set pursuant to § 4-7-10.4 and expenses
20 at the same rate as other state employees while actually engaged in official duties.

21 Section 8. Any person engaged in the practice of massage in this state shall conspicuously
22 display a valid license or certified duplicate license from the board in the person's place of
23 business.

24 Section 9. Any fees and civil penalties collected under this Act shall be used for the

operation of the board and the implementation of this Act.

Section 10. Any person who engages in the practice of massage or holds himself or herself out to the public as engaged in the practice of massage without a license pursuant to this Act is guilty of a Class 1 misdemeanor and upon conviction the court shall assess a civil penalty of one thousand dollars payable to the board. The state or the board may file a civil action to enjoin any person engaging in the practice of massage without a license.

Section 11. Any person who advertises services to the public as a massage therapist, bodywork therapist, masseur, masseuse, massagist, or any derivation or abbreviation of those terms or any other term commonly recognized to mean the practice of massage therapy while not licensed under this Act is guilty of a Class 1 misdemeanor. Upon conviction the court shall assess a civil penalty of one thousand dollars payable to the board. The state or the board may file a civil action to enjoin any person from violating this section.

Section 12. The board may issue a license to engage in the practice of massage to any person who submits an application form and the nonrefundable application fee as approved in section 17 of this Act and who demonstrates the following qualifications:

- (1) Eighteen years of age or older;
- (2) Good moral character;
- (3) High school diploma or equivalent;
- (4) Completion of no less than five hundred hours of training or study in the practice of massage with a facility or instructor recognized by the board;
- (5) Absence of unprofessional conduct;
- (6) Malpractice insurance coverage with limits at or above an amount set by the board;
- and
- (7) Passing score on an examination administered by a national certification board

1 accredited by the National Commission of Certifying Agencies and in good standing
2 with the National Organization of Competency Assurance.

3 A license issued under this Act is valid for a period of two years from the date it was issued
4 and automatically expires unless it is renewed. The board may refuse to grant a license to any
5 person based on failure to demonstrate the requirements of this section. An applicant may appeal
6 the denial of a license in compliance with chapter 1-26.

7 Section 13. For the purposes of this Act, any of the following acts constitute unprofessional
8 conduct:

- 9 (1) Conviction of any felony, any crime involving or relating to the practice of
10 massage, or any crime involving dishonesty or moral turpitude;
- 11 (2) Abuse of or addiction to alcohol, marijuana, or any controlled substance;
- 12 (3) Providing the board false or misleading information on any application for a license
13 or renewal of a license;
- 14 (4) Willful misconduct or negligence in the practice of massage;
- 15 (5) Prescribing or administering controlled substances, narcotics, barbiturates, or other
16 potentially habit forming substances unless done through separate licensure under
17 state law;
- 18 (6) Exceeding the scope of practice of massage as defined in section 1 of this Act;
- 19 (7) Engaging in any lewd or immoral conduct;
- 20 (8) Making excessive or fraudulent charges for services;
- 21 (9) Engaging in conduct which endangers the health or welfare of clients or other
22 persons; or
- 23 (10) Failure to comply with any provision of this Act.

24 Section 14. For two years following the effective date of this Act, the board may issue a

1 license to a person who demonstrates completion of a minimum of one hundred hours of
2 training or study in the practice of massage with a facility or instructor recognized by the board
3 or adequate experience derived from the active practice of massage for at least the three years
4 immediately preceding the date of the application. Any person applying for a license under this
5 section is not required to comply with the examination and training or study requirements of
6 section 12 of this Act but shall meet the other criteria set forth in section 12 of this Act. Any
7 person applying for a license under this section shall submit an application as required by
8 section 12 of this Act along with proof of active practice for at least three years prior to the date
9 of application.

10 Section 15. Any person holding a valid license to practice massage from another state whose
11 requirements for licensure are not less restrictive than this state is not required to take the
12 examination for licensure. Any person applying for a license under this section shall submit an
13 application as required by section 12 of this Act along with proof of a current license. This
14 section applies only to persons holding licenses from states which offer reciprocity to persons
15 licensed by this state.

16 Section 16. Any person holding a valid license under this Act may renew that license by
17 paying the required renewal fee and providing proof of compliance with the continuing
18 education requirements set by the board at least thirty days prior to the expiration of the current
19 license. Any person who submits a license renewal late shall submit a seventy-five dollar late
20 fee. Any person whose license has lapsed shall reapply for a license.

21 Section 17. Any applicant for a license under this Act shall submit a nonrefundable
22 application fee of one hundred dollars. Any person who has a license issued or renewed by the
23 board shall submit a license fee in an amount set by the board, but not to exceed three hundred
24 dollars.

1 Section 18. Any person holding a valid license under this Act may obtain a certified
2 duplicate license by submitting a fee of twenty-five dollars for each certified duplicate.

3 Section 19. Any person licensed under this Act shall complete continuing education relating
4 to competence in the practice of massage on an annual basis in an amount, type, and from a
5 facility or instructor approved by the board. The board may waive the continuing education
6 requirement upon proof of illness or hardship.

7 Section 20. The board may inspect the place of business of any person with a license issued
8 pursuant to this Act during normal business hours or upon written notice.

9 Section 21. Any person holding a valid license under this Act and engaged in the practice
10 of massage therapy shall carry professional liability insurance coverage with limits at or in
11 excess of the minimum amount established by the board.

12 Section 22. The board may cancel, suspend, or revoke a license following a contested case
13 hearing in compliance with chapter 1-26 upon satisfactory proof of incompetence,
14 unprofessional conduct, or a violation of any provision of this Act. The board may waive the
15 requirement of prior notice and an informal meeting set forth in § 1-26-29 if the licensee
16 presents an immediate threat to the public or has engaged in willful misconduct. Any person
17 may appeal the cancellation, suspension, or revocation of a license in compliance with chapter
18 1-26.

19 Section 23. Any person whose license has been cancelled, suspended, or revoked by the
20 board may not reapply for a license until one year after it was cancelled, suspended, or revoked
21 unless a different time has been set by the board.

22 Section 24. The board may promulgate rules pursuant to chapter 1-26 in the following
23 areas:

24 (1) The form and information required for any license application;

- 1 (2) A list of recognized facilities or instructors who may provide training or instruction
2 required for licensure or continuing education requirements;
- 3 (3) The amount of license fees;
- 4 (4) The procedures for conducting disciplinary proceedings; and
- 5 (5) The minimum limits of malpractice insurance to be carried by any person licensed
6 under this Act.

7 Section 25. The provisions of this Act do not apply to any person performing massage for
8 compensation if the massage is done under one of the following circumstances:

- 9 (1) As part of a licensed practice as a physician, physician assistant, chiropractor, nurse,
10 physical therapist, athletic trainer, or other health care profession licensed or certified
11 under Title 36;
- 12 (2) As part of a licensed practice pursuant to chapter 36-14 or 36-15, if the licensee is
13 performing within the scope of the licensed practice and the licensee does not hold
14 himself or herself out to be a massage therapist or to be engaged in the practice of
15 massage therapy;
- 16 (3) In furtherance of duties as an employee of the United States;
- 17 (4) As part of a course of study with a facility or instructor recognized and approved by
18 the board to provide training in massage or the provision of such instruction;
- 19 (5) As part of providing a course of instruction or continuing education in the practice
20 of massage therapy on a temporary basis not in excess of ten days; or
- 21 (6) Manipulation of the soft tissues of the human body is restricted to the hands, feet, or
22 ears and the person does not hold himself or herself out to be a massage therapist or
23 to be engaged in the practice of massage therapy.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

517L0418

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1090 - 01/24/2005

Introduced by: Representatives Cutler, Elliott, Sebert, and Vehle and Senators McCracken, Broderick, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to allow debt cancellation contract and debt suspension
2 contract fees to be included in consumer installment sales contracts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 54-3A-5 be amended to read as follows:

5 54-3A-5. In addition to the finance charge, a creditor may contract for, and receive the
6 following additional charges in connection with an installment sales contract if such charges are
7 itemized and disclosed to the buyer:

8 (1) Official fees and taxes; ~~and~~

9 (2) Charges for credit life, accident, health, loss of income, property, or liability
10 insurance; ~~provided, that.~~ However any insurance ~~shall be~~ is optional, and the
11 consumer ~~must~~ shall be informed, in writing, that any insurance is optional; and

12 (3) Charges for debt cancellation contracts and debt suspension contracts, as defined in
13 § 51A-1-2, if the debt cancellation contract or debt suspension contract is a contract
14 of a depository institution authorized to provide such coverage, and the contract is
15 sold directly by the authorized depository institution or by a retailer acting as an agent



1 for the authorized depository institution. However, any debt cancellation contract or
2 debt suspension contract is optional, and the consumer shall be informed, in writing,
3 that any such contract is optional.

4 Any such charges must be disclosed and explained to the consumer prior to signing any
5 agreement to repay a consumer credit obligation. Any such charges must be separately agreed
6 to in writing and separately signed by the consumer.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

655L0654

HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1243** - 02/05/2005

Introduced by: Representatives Olson (Ryan), Fryslie, Hackl, Hills, Koistinen, and Rounds
and Senators Broderick, Adelstein, Gray, Hundstad, Koskan, and Peterson
(Jim)

1 FOR AN ACT ENTITLED, An Act to provide for the copying and retention of foreign
2 documentation used to apply for certain state licenses, permits, and identification cards.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-12-3.1 be amended to read as follows:

5 32-12-3.1. Any applicant under this chapter shall, on making application for an operator's
6 license, motorcycle operator's license, restricted minor's permit, motorcycle restricted minor's
7 permit, instruction permit, motorcycle instruction permit, or nondriver identification card,
8 present to the examiner a certified copy of a United States birth certificate issued in or by a city,
9 county, or state, a tribal identification card that provides evidence that a certified birth certificate
10 issued by a city, county, or state was used to obtain the tribal identification card and is in a form
11 and content acceptable to the Department of Public Safety, a naturalization and immigration
12 record authorizing the applicant's presence in the United States, or a valid passport. If any of the
13 documentation offered by the applicant includes a naturalization and immigration record or has
14 been issued by a foreign country or jurisdiction, the department shall make a copy of the



1 documentation and shall retain the copy for one year from the date the copy was made or until
2 the expiration of any license, permit, or identification card issued in reliance upon the
3 documentation, whichever is later. The examiner may accept other evidence of birth only if the
4 examiner is satisfied that the applicant cannot, for good reason beyond the applicant's control,
5 produce such primary documents. The Department of Public Safety may not require new
6 evidence of birth at the time an application is made by a person holding an operator's license,
7 motorcycle operator's license, restricted minor's permit, motorcycle restricted minor's permit,
8 instruction permit, motorcycle instruction permit, or nondriver identification card, if that
9 person's driver license or nondriver identification card is turned in to the department with the
10 application. Any person who obtains a driver license or nondriver identification card pursuant
11 to this section fraudulently or by use of a fraudulently obtained document is guilty of a Class 2
12 misdemeanor.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0272

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 35** - 02/14/2005

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to construct a
2 replacement manager's dwelling at the Cottonwood Research Station, to dispose of the
3 existing dwelling on this site, and to make an appropriation therefor.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. The Board of Regents may contract to replace the manager's dwelling with an
6 appropriate residential structure at the Cottonwood Research Station, located near Cottonwood
7 in Haakon County.

8 Section 2. There is hereby appropriated one hundred fifty thousand dollars (\$150,000), or
9 so much thereof as may be necessary, from other funds to the Board of Regents for the purposes
10 of this Act.

11 Section 3. The Board of Regents may accept, transfer, and expend any funds obtained for
12 these purposes from federal sources, gifts, and contributions, or any other source, all of which
13 shall be deemed appropriated to the purposes of this Act.

14 Section 4. The Board of Regents may sell, exchange, demolish, or otherwise dispose of the
15 existing multi-story wood frame dwelling located at the Cottonwood Research Station.



1 Section 5. The design and construction of the replacement dwelling shall be under the
2 general charge and supervision of the Bureau of Administration as provided in chapter 5-14.

3 Section 6. The commissioner of the Bureau of Administration and the executive director of
4 the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay
5 expenditures authorized by this Act.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0367

SENATE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. **SB 58** - 02/14/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Commerce at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to require insurers to cooperate with the Department of
2 Social Services in the coordination of medical benefits.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Within sixty days of a request from the Department of Social Services, the department and
7 an insurer shall negotiate an acceptable format for the transmission of information from the
8 insurer's database of policy holders, sponsors, subscribers, covered individuals in South Dakota,
9 and coverage dates. The format shall include the data elements, medium, frequency of reporting,
10 any costs of the insurer to be reimbursed, and procedures that will be followed when a data
11 match is found. The Department of Social Services shall match the name, address, date of birth,
12 and social security number if available, of the insured's policyholders, sponsors, subscribers, and
13 covered individuals against the Medicaid eligible recipients and recipients of support
14 enforcement services as defined in subdivision 25-7A-1(19).



1 Upon discovery of a match, the department may incorporate the following information into
2 its recipient database:

- 3 (1) The name, address, date of birth, social security number if available, and the unique
4 health care identification number of the covered individual;
- 5 (2) The name, address, date of birth, social security number if available, policy number,
6 and group identification number of the policyholder, sponsor, or subscriber;
- 7 (3) The name and address of the employer if it is an employer-employee benefit plan;
- 8 (4) Types of covered services under the plan or policy;
- 9 (5) Coverage effective date and termination of coverage date for each covered
10 individual; and
- 11 (6) The name and address of the claim administrator for the policy or plan.

12 The department may not use or disclose any information provided by the insurer other than
13 as permitted or required by law. The insurer may not be held liable for the release of insurance
14 coverage information to the department or the director by any party when done so under the
15 authority of this Act.

16 Section 2. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 Notwithstanding any other provision of a health benefit plan, health insurance policy, plan,
19 contract, or certificate, an insurer shall recognize that an application for medical assistance or
20 acceptance of medical assistance, paid by the Department of Social Services operates as a
21 release of any information kept by the insurer and readily available, that would facilitate
22 efficient coordination of benefits between the department and the insurer, which may include:

- 23 (1) The name, address, date of birth, social security number if available, and unique
24 health care identification number of the covered individual;

- 1 (2) The name, address, date of birth, social security number if available, policy number,
2 group identification number of the policyholder, sponsor, or subscriber;
- 3 (3) The name and address of the employer if it is an employer-employee benefit plan;
4 types of services covered under the plan or policy; and the name and address of the
5 claims administrator for the policy or plan;
- 6 (4) Previously paid benefits including the name and address of the payee; and
- 7 (5) The name and address of claims processing or administration centers, or both.

8 Upon written request by the department, the insurer shall provide the requested information
9 in writing within thirty calendar days of receipt of the request.

10 Section 3. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Notwithstanding any other provision of a health benefit plan, health insurance policy, plan,
13 contract, or certificate, that is issued, entered into, or renewed after July 1, 2005, no insurer may
14 refuse to reimburse the Department of Social Services because of the manner, form, or date of
15 a claim for reimbursement, if within one year after the date the claim has been paid by medicaid,
16 for which reimbursement is sought, the department provides the insurer evidence of the insurer's
17 liability.

18 Section 4. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If the Department of Social Services notifies an insurer that the department has paid for
21 services on behalf of an individual who is covered under an individual, group, or blanket health
22 insurance policy or contract that the insurer issued, delivered, entered into, or renewed in the
23 state, to the extent that the insurer is legally liable, it shall reimburse the department for the cost
24 of the services, regardless of any provision in the health insurance policy or contract that

1 requires payment to the policy holder, subscriber, or another payee. If the insurer, after notice
2 from the department, issues payment to any payee other than the department, the insurer remains
3 liable to the department for the amount of benefits paid to the other party.

4 Section 5. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purposes of this Act, the term, insurer, means:

- 7 (1) Any commercial insurance company, employer-employee benefit plan, health
8 maintenance organization, professional association, public self-funded employer or
9 pool, union, or fraternal group selling or otherwise offering individual or group
10 health insurance coverage including self-insured and self-funded plans;
- 11 (2) Any profit or nonprofit prepaid plan offering either medical services of full or partial
12 payment for services included in the department's medicaid plan;
- 13 (3) Any other entity offering health benefits for which a medicaid recipient may be
14 eligible in addition to public medical assistance; or
- 15 (4) Any entity which processes claims, administers services, or otherwise manages health
16 benefits on behalf of any of the aforementioned insurers.

17 Section 6. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 For the purposes of this Act, the term, department, means the Department of Social Services,
20 or an entity under contract with the Department of Social Services to carry out the functions of
21 this Act.

22 Section 7. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 The provisions of chapter 1-27 do not apply to any records the insurer is required to provide

1 to the department.

2 Section 8. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 This Act does not apply to any coverages under a personal lines property and casualty
5 policy.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

616L0473

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 193** - 02/14/2005

Introduced by: Senators Greenfield, Abdallah, Apa, Bartling, Dempster, Duenwald, Duniphan, Earley, Gant, Gray, Hansen (Tom), Hanson (Gary), Kooistra, Koskan, Lintz, McCracken, McNenny, Moore, Napoli, Peterson (Jim), Schoenbeck, Smidt, Sutton (Duane), and Two Bulls and Representatives Weems, Brunner, Buckingham, Davis, Deadrick, Dykstra, Frost, Fryslie, Garnos, Glenski, Hackl, Hargens, Howie, Hunt, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Miles, Nelson, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Street, Tornow, Van Etten, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the performance of
2 abortions on unemancipated minors and those found to be incompetent.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-23A-7 be amended to read as follows:

5 34-23A-7. No abortion may be performed upon an unemancipated minor or upon a female
6 for whom a guardian has been appointed because of a finding of incompetency, until at least
7 forty-eight hours after written notice of the pending operation has been delivered in the manner
8 specified in this section. The notice shall be addressed to the parent at the usual place of abode
9 of the parent and delivered personally to the parent by the physician or an agent. In lieu of such
10 delivery, notice may be made by certified mail addressed to the parent at the usual place of
11 abode of the parent with return receipt requested and restricted delivery to the addressee, which



means a postal employee can only deliver the mail to the authorized addressee. If notice is made by certified mail, the time of delivery shall be deemed to occur at twelve noon on the next day on which regular mail delivery takes place, subsequent to mailing.

No notice is required under this section if:

(1) The attending physician certifies in the ~~pregnant~~ unemancipated minor's or the incompetent female's medical record that, on the basis of the physician's good faith clinical judgment, a medical emergency exists that so complicates the medical condition of ~~a pregnant~~ the unemancipated minor or the incompetent female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function and there is insufficient time to provide the required notice. The parent shall be verbally informed as soon as possible, but not later than twenty-four hours after the performance of the emergency abortion, that an emergency abortion was performed on the unemancipated minor or incompetent female and shall also be sent a written notice, in the manner described in this section, of the performed emergency abortion. If the unemancipated minor or the incompetent female, upon whom an emergency abortion was performed, elects not to allow the notification of her parent, any judge of a circuit court shall, upon petition, or motion, and after an appropriate hearing, authorize the waiving of the required notice of the performed abortion if the judge determines, by clear and convincing evidence that the unemancipated minor or incompetent female is mature and capable of determining whether notification should be given, or that the waiver would be in the unemancipated minor's or the incompetent female's best interest; or

(2) The person who is entitled to notice certifies in writing that ~~he~~ the person has been

1 notified. The certification is valid only if the signature has been notarized. If the
2 person does not provide a notarized signature, the person shall be sent a written
3 notice as described in this section. No abortion as described in this section may be
4 performed until at least forty-eight hours after written notice of the pending operation
5 has been delivered in the manner specified in this section; or

- 6 (3) ~~A pregnant~~ An unemancipated minor or incompetent female elects not to allow the
7 notification of her parent ~~or guardian or conservator~~, in which case, any judge of a
8 circuit court shall, upon petition, or motion, and after an appropriate hearing,
9 authorize a physician to perform the abortion if the judge determines, by clear and
10 convincing evidence, that the ~~pregnant~~ unemancipated minor or incompetent female
11 is mature and capable of giving informed consent to the proposed abortion. If the
12 judge determines that the ~~pregnant~~ unemancipated minor or incompetent female is
13 not mature, or if ~~the pregnant female~~ she does not claim to be mature, the judge shall
14 determine, by clear and convincing evidence, whether the performance of an abortion
15 upon her without notification of her parent, ~~guardian, or conservator~~ would be in her
16 best interests and shall authorize a physician to perform the abortion without such
17 notification if the judge concludes that ~~the pregnant female's~~ her best interests would
18 be served thereby.

19 Section 2. That § 34-23A-7.1 be amended to read as follows:

20 34-23A-7.1. In any proceeding pursuant to subdivision 34-23A-7(3), the ~~pregnant~~
21 unemancipated minor or incompetent female may participate in proceedings in the court on her
22 own behalf, and the court may appoint a guardian ad litem for her. The court shall, however,
23 advise her that she has a right to court-appointed counsel and shall, upon her request, provide
24 her with such counsel. Proceedings in the court under ~~this~~ subdivision 34-23A-7(3) shall be

1 confidential and shall be given such precedence over other pending matters so that the court may
2 reach a decision promptly and without delay so as to serve the best interests of the ~~pregnant~~
3 unemancipated minor or incompetent female. A judge of the court who conducts proceedings
4 under ~~this~~ subdivision 34-23A-7(3) shall make in writing specific factual findings and legal
5 conclusions supporting the decision and shall order a record of the evidence to be maintained
6 including the judge's own findings and conclusions.

7 An expedited confidential appeal shall be available to any such ~~pregnant~~ unemancipated
8 minor or incompetent female for whom the court denies an order authorizing an abortion
9 without notification. An order authorizing an abortion without notification is not subject to
10 appeal. No filing fees are required of any such ~~pregnant~~ unemancipated minor or incompetent
11 female at either the trial or the appellate level. Access to the trial court for the purposes of such
12 a petition or motion, and access to the appellate courts for purposes of making an appeal from
13 denial of the same, shall be afforded such ~~a pregnant woman~~ an unemancipated minor or
14 incompetent female twenty-four hours a day, seven days a week. Notwithstanding any other
15 provision of law, all pleadings, papers, and other documents filed pursuant to this section are
16 confidential, are not public records, and are not open for inspection by any member of the public
17 for any purpose.

18 Section 3. That subdivision (4) of § 34-23A-1 be amended to read as follows:

19 (4) "Parent," one parent or guardian of the pregnant minor, or one person standing in
20 loco parentis who has care and control of the minor and with whom the minor
21 regularly resides, or the guardian or conservator of the pregnant female;

22

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

733L0508

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 197** - 02/14/2005

Introduced by: Senators McNenny, Bogue, and Hanson (Gary) and Representative Gillespie

1 FOR AN ACT ENTITLED, An Act to clarify how certain registered livestock brands held in
2 joint tenancy may be transferred.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 40-19 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any transfer of a livestock brand registered in the name of more than one person requires
7 the written consent of all registered owners.

